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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,890	12/14/2001	Robert J. Lisanke	EWG-134 US	9050

7590

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EXAMINER

DOAN, DUYEN MY

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,890

Applicant(s)

LISANKE, ROBERT J.

Examiner

Duyen M Doan

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/19/2002.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Detail Action

Claims 1-14 are presented for examination.

Drawings

The drawings are objected to because figure 2, step 205 is misspell, Examiner interpret "treh" as "the". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected because of the following informalities: miss type on page 2 of the specification. Figure 1, "program 122", not "program 1122".

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1,3,5,7,9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 merely claims "computer program" that is mere arrangements or compilations of facts, information, or data *per se* and which is merely stored so as to be called "computer-readable" or even outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer ("acts"), then such descriptive material alone does not impart functionality either to the data as so structured, or to the computer. Thus, such "descriptive material," non-functional descriptive material, that cannot exhibit any functional interrelationship with the way in which computing processes are performed does not constitute a statutory process, machine, manufacture or composition of matter. Also, the purely non-functional descriptive material cannot alone provide the practical application for

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the manufacture. See *In re Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760.

In re Sarkar, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978). See Examination Guidelines for Computer-Related Inventions-Final Version, pages 9&10. See MPEP § 2106(IV)(B)(1)(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al (us pat 6529505) in view of Lu et al (us pat 6772211).

As regarding claim 1, Li et al discloses a computer program for assigning cost and benefit values to requests received by said system (col.6, line 24-67, col.7, line 1-37), a computer program for prioritizing said requests in accordance with the assigned cost and benefit values (col.6, line 24-67, col.7, line 1-37), and a computer program for scheduling said requests in accordance with the assigned priorities, whereby said requests are not necessarily processed in a first come first served basis (col.6, line 24-67, col.7, line 1-37).

Li et al do not expressly disclose the requests are not necessarily processed in a first come first serve basis.

Lu et al teach the requests are not necessarily processed in a first come first serve basis (col.5, line 1-18).

It is obvious to one of ordinary skill in the art at the time of the invention was made to modify the system of Li et al with the teaching of Lu et al to prioritizing request not base on first come first serve basis for the purpose of giving the preferred customers preferential access. A preferred customer may be one who is on a shopping cart page as compared to a regular customer who is merely browsing the catalog, it is desirable to have way to identify less preferential packet and accord them with the appropriate quality of service (see Lu et al col.4, line 25-47).

As regarding claim 2 is rejected for the same rationale as claim 1.

As regarding claim 3, Li et al-Lu et al disclose the origin of a request is considered when assigning a priority to said packet (see Li et al col.6, line 19-29, col.8, line 5-10).

As regarding claim 4, the limitation is similar to claim 3, therefore, rejected for the same rationale as claim 3.

As regarding claim 5, Li et al-Lu et al disclose requests are classified and prioritized in accordance with parameters established by a system operator (see Li et al col.7, line 6-36, col.8, line 5-10).

As regarding claim 6, the limitation is similar to claim 3, therefore, is rejected for the same rationale as claim 5.

As regarding claim 11, the limitations are similar to claim 1, therefore rejected for same rationale as claim 1.

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As regarding claim 12, Lu et al teach a system operator establishes said criteria whereby said system operator can control the priority that requests sent to said server are processed (see figure 5, content-Aware Application Switch 20 and server farm 30). The same motivation was utilized in claim 11 is applied equally as well to claim 12.

As regarding claim 13, Lu et al teach requests are sent to said server over the Internet (col.7, line 1-37). The same motivation was utilized in claim 11 is applied equally as well to claim 13.

As regarding claim 14, Lu et al discloses resources in said web server are assigned to requests based upon the priority and classification of said requests (col.7, line 26-37). The same motivation was utilized in claim 11 is applied equally as well to claim 14.

Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al (us pat 6529508) and Lu et al (us pat 6772211) as applied to claim 1 above, and further in view of Salim (us pat 6628653).

As regarding claim 7, Li et al and Lu et al discloses every limitation of claim 1 above, but the combination of Li et al and Lu et al does not expressly disclose requests are classified and prioritized in accordance with the payload data in requests received by said system.

Salim teaches requests are classified and prioritized in accordance with the payload data in requests received by said system (col.1, line 32-36).

It is obvious to one of ordinary skill in the art at the time of the invention was made to modify the system of Li et al-Lu et al with the teaching of Salim to prioritizing request base on the payload data in requests for the purpose of transmission through the network, forwarded switched or processed according to information stored in various parts of the packet header, depending on which level of the various levels of protocols is being used (see Salim col.1, line 20-25).

As regarding claim 8, is similar to claim 7, therefore is rejected for the same rationale as claim 7.

As regarding claim 9, Li et al and Lu et al discloses every limitation of claim 1 above, but the combination of Li et al and Lu et al does not expressly disclose requests are classified and prioritized in accordance with both the payload data in requests received by said system and with in the packet headers of such requests.

Salim teaches requests are classified and prioritized in accordance with both the payload data in requests received by said system and with in the packet headers of such requests (col.1, line 32-36).

It is obvious to one of ordinary skill in the art at the time of the invention was made to modify the system of Li et al-Lu et al with the teaching of Salim to prioritizing request base on both the payload data in requests received by said system and with in the packet headers of such requests for the purpose of transmission through the network, forwarded switched or processed according to information stored in various parts of the packet header, depending on which level of the various levels of protocols is being used (see Salim col.1, line 20-25).

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As regarding claim 10, is similar to claim 9, therefore is rejected for the same rationale as claim 9.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duyen M Doan whose telephone number is (571) 272-4226. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner
Duyen Doan
Art unit 2143

DD

Will C. Vaughn
Primary Examiner
Art Unit 2143
William C. Vaughn